

# SENATE RECORD VOTE ANALYSIS

105th Congress  
2nd Session

Vote No. 139

May 18, 1998, 6:18 pm  
Page S-4997 Temp. Record

## AMERICAN COMPETITIVENESS ACT/Regulations on Hiring Americans First

**SUBJECT:** American Competitiveness Act of 1998 . . . S. 1723. Abraham motion to table the Kennedy amendment No. 2417.

### ACTION: MOTION TO TABLE AGREED TO, 59-39

**SYNOPSIS:** As reported, S. 1723, the American Competitiveness Act, will respond to a current shortage of skilled workers in the United States, particularly in high technology fields, by increasing for 5 years the number of temporary work (H-1B) visas the United States grants each year for such workers and by authorizing \$50 million annually in matching educational grants for mathematics, computer, and engineering degrees for disadvantaged, low-income students.

**The Kennedy amendment** would make employers subject to the bill's penalties if prior to petitioning to bring in H-1B workers they did not first take timely, significant, and effective steps to recruit and retain United States workers for those jobs. Such steps would include "good faith" recruitment in the United States, using procedures that met "industry-wide" standards and offering employment to any qualified United States worker who applied. The Department of Labor would decide if a company was in compliance. The amendment would not apply to certain aliens, including aliens with "extraordinary" abilities and aliens who were coming as researchers or faculty for colleges, nonprofit institutions, or Federal Government entities.

Debate was limited by unanimous consent. After debate, Senator Abraham moved to table the Kennedy amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

The Kennedy amendment would cripple the H-1B immigrant program. It would give the Department of Labor complete authority to decide if a company had tried to hire an American before petitioning to bring in a temporary foreign worker. The claim made by the amendment's supporters that all that a company would have to do is "check a box" saying it had made such an effort is ridiculous.

(See other side)

YEAS (59)			NAYS (39)			NOT VOTING (2)	
Republicans (53 or 98%)		Democrats (6 or 14%)	Republicans (1 or 2%)	Democrats (38 or 86%)		Republicans (1)	Democrats (1)
Abraham	Hutchison	Baucus	Campbell	Akaka	Inouye	Faircloth- <sup>2</sup>	Levin- <sup>2AN</sup>
Allard	Inhofe	Cleland		Biden	Johnson		
Ashcroft	Jeffords	Graham		Bingaman	Kennedy		
Bennett	Kempthorne	Kohl		Boxer	Kerrey		
Bond	Kyl	Lieberman		Breaux	Kerry		
Brownback	Lott	Murray		Bryan	Landrieu		
Burns	Lugar			Bumpers	Lautenberg		
Chafee	Mack			Byrd	Leahy		
Coats	McCain			Conrad	Mikulski		
Cochran	McConnell			Daschle	Moseley-Braun		
Collins	Murkowski			Dodd	Moynihan		
Coverdell	Nickles			Dorgan	Reed		
Craig	Roberts			Durbin	Reid		
D'Amato	Roth			Feingold	Robb		
DeWine	Santorum			Feinstein	Rockefeller		
Domenici	Sessions			Ford	Sarbanes		
Enzi	Shelby			Glenn	Torricelli		
Frist	Smith, Bob			Harkin	Wellstone		
Gorton	Smith, Gordon			Hollings	Wyden		
Gramm	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hagel	Thompson						
Hatch	Thurmond						
Helms	Warner						
Hutchinson							

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

No employer would be willing to take such a foolhardy chance. If it did, the Department of Labor might decide that it had not advertised enough to find American workers, or that it had failed to go to the right universities to recruit students, or that it had failed in any other number of possible ways to comply with the Kennedy amendment's requirements. It could then be hit with a \$5,000 fine per "violation" and pay up to \$25,000 per violation in remedies, and it could be disbarred from using the H-1B program for 2 years. Under these circumstances, the only rational way for a company to proceed would be for it to get the Department of Labor to approve its employee-search activities before it petitioned to bring in any H-1B immigrants. The inevitable result would be that the Department of Labor would develop, over the next several years, a system such as the one it has already created for giving "labor certifications" to workers so they can come in under permanent visas. That typically bureaucratic Department of Labor procedure takes an average of 2 years to complete. We have a temporary labor shortage now. We cannot put this program on hold for a couple of years while the Department of Labor develops new regulations, and then wait a couple of more years while employers fight through the maze of regulations that are developed to bring in workers. Yet another problem with the Kennedy amendment is that it would require "any qualified" United States applicant to be hired. The Department of Labor has usually interpreted "qualified" as meaning that bare minimum qualifications are met. Suppose a growing company had 2 openings, and only 1 United States applicant, who, on paper, the Department of Labor said met the company's bare minimum requirements. That company, of course, would not want to hire a barely competent worker--it would want to hire an exemplary worker. Under current law, it can seek the best workers here and abroad; under the Kennedy amendment, it would have to hire the mediocre American worker before petitioning to bring in a foreign worker. Under this circumstance, we doubt that the company would fill either position. It would be better to limit growth than to be forced to hire mediocre workers. The final problem with the Kennedy amendment is that it is addressing a nonexistent problem. In all of the years the H-1B program has been in operation, there have only been 8 willful violations out of hundreds of thousands of cases. The program is working as intended. Foreign skilled workers are brought to the United States to work, and they typically work in the highest growth industries. Their skills cause those companies to grow at much faster rates, leading to the hiring of tens of thousands of more Americans. Bringing in these workers does not cause Americans to lose jobs, it causes a huge net increase in jobs for Americans, and those jobs are in the highest paying industries in the country. If we were to pass the Kennedy amendment we would cut off high-tech industries access to the temporary, skilled help that they needed, and those industries would be forced to move overseas in order to continue to grow. Passing this amendment would jeopardize the strongest sector of our economy. It is a highly dangerous amendment; we urge our colleagues to table it.

**Those opposing the motion to table contended:**

H-1B workers are typically entry-level workers in skilled fields straight out of college. Most of them earn between \$25,000 and \$50,000. These are not jobs that are reserved for the best and brightest--they are beginner jobs in high-paying fields. We think that Americans should get first crack at any such job openings before employers go looking for foreign workers. We have anecdotal evidence that employers like to hire H-1B workers because they work longer hours under worse conditions without complaint. They are not better workers; they are just easier to abuse because they can always be deported. Not surprisingly, America's business groups have come out in opposition to this amendment. However, we make United States immigration policy, not the chief executive officers of American corporations. Our colleagues tell us that there is a huge shortage of technical workers, and that companies are going to great lengths to try to find workers. If that is the case, and we believe that it probably is for many companies, then this amendment will not present any problem. When they petition foreign H-1B workers, all they will have to do is check a box on their application forms attesting that they made a good faith effort to find Americans to hire but were unsuccessful. The amendment is that simple. We urge our colleagues to give it their support.